

Memorandum

To : David Gau
Chief, Policy Planning & Standards Division

Date: November 12, 1999

From : Dan Nauman
Tax Counsel

Subject: *Proposition 110 – Transfer of Base Year Value for Disabled Persons*

This is in reply to your Memorandum To Assistant Chief Counsel Larry Augusta, asking our opinion as to whether a minor (disabled) child can be a co-owner on record title of a replacement property for purposes of filing a claim under Revenue and Taxation Code section 69.5 to transfer the base year value to a replacement property? The situation you relate is as follows. A couple's minor child recently became permanently disabled. The parents must sell their current home (a two-story residence) and purchase another. You ask whether the parents could purchase a property with the child on title as co-owner and file a claim to transfer the base year value from their original property to the purchased property? You further ask whether a minor child can own an interest in property, and whether the child would have to be a co-owner of the original property?

As will be set forth below, a minor may own real property or an interest therein, but may not convey or make contracts relating to real property. Therefore, a minor may not directly qualify for the transfer of base year value treatment of section 69.5. However, a minor may obtain the benefit of that section indirectly through a guardianship or trust. In order to do so, the minor must be a beneficial owner of both the original property and the replacement property.

A minor may acquire property, because the law presumes his acceptance of a beneficial grant. *Estate of Yano* (1922) 188 Cal. 645, 649. However, a minor cannot give a delegation of power (*i.e.*, a power of attorney) or make a contract relating to real property or any interest therein. Family Code § 6701. Any such purported contracts are void. See *Lee v. Hibernia Sav. & Loan Soc'y* (1918) 177 Cal. 656.

Through proceedings in the Superior Court, a guardian may be appointed for the person, estate, or person and estate of a minor. Real property in California owned by a minor can be dealt with solely through guardianship proceedings in this state.

Moreover, we have previously expressed the opinion that the present beneficiary of an irrevocable trust should be considered the owner of the property held in trust for purposes of section 69.5. This is so because, although section 69.5 does not include a definition of the term "owner," since it is a specific type of exclusion from change in ownership and its sole purpose is to avoid what would otherwise be the effects of a change in ownership, the term "owner" should be construed in a manner consistent with other provisions of the law applicable to change in ownership. Current Proposition 13 change in ownership law treats the present beneficiary of a trust who has a vested beneficial and equitable interest in the property as the owner, rather than the trustee who merely holds legal title. See Annotation No. 200.0075.

Therefore, the guardian of the estate of a minor owning real property, or the trustee of a trust owning real property in which the minor is a beneficial owner, could qualify the property for section 69.5 transfer of base year value treatment if the minor, as owner, and the properties met all of the requirements of the section.

In this regard, section 69.5 provides that:

(a)(1)... any severely and permanently disabled person, who resides in property that is eligible for the homeowner's exemption . . . may transfer, subject to the conditions and limitations provided in this section, the base year value of that property to any replacement dwelling of equal or lesser value that is located within the same county and is purchased or newly constructed by that person as his or her principal residence within two years of the sale by that person of the original property . . .

* * *

(b) In addition to meeting the requirements of subdivision (a), any person claiming the property tax relief provided by this section shall be eligible for that relief only if the following conditions are met:

(1) *The claimant is an owner and a resident of the original property* either at the time of its sale or within two years of the purchase or new construction of the replacement dwelling.

(2) The original property is eligible for the Homeowner's Exemption, as the result of the claimant's ownership and occupation of the property as his or her principal residence, . . .

* * *

(4) At the time of claiming the property tax relief provided by subdivision (a), *the claimant is an owner of a replacement dwelling and occupies it as his or her principal place of residence . . .*
(Emphasis added.)

Thus, in answer to your final question, if the disabled child is the eligible claimant, by virtue of his or her permanent disability, for the transfer of base year value treatment provided for in section 69.5, that section requires that the child be an owner, as defined above, of both the original property and the replacement dwelling prior to claiming such property tax relief.

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cc: Mr. Dick Johnson, MIC:63
Mr. Harold Hale, MIC:61
Mr. Charles Knudsen, MIC:62
Ms. Jennifer Willis, MIC:70

ANNOTATION

200.0000 BASE YEAR VALUE TRANSFER

200.0076 **Owner.** A minor may own real property or an interest therein, but may not convey or make contracts relating to real property. Therefore, a minor may not directly qualify for the transfer of base year value treatment of Revenue and Taxation Code section 69.5. However, a minor may obtain the benefit of that section indirectly through a guardianship or trust. In order to do so, the minor must be a beneficial owner of both the original property and the replacement property. **C 11/12/99.**